

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re Application of

CHAMELEON RADIO CORPORATION

For Authority to Make Major Changes to the
Licensed Facilities of Radio Station KFCC,
1270 kHz, Bay City, Texas

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File No. BP-950804AC

To: The Acting Chief, Audio Services Division, Mass Media Bureau

FORMAL OPPOSITION TO APPLICATION

Tom S. Whitehead, Inc., the licensee of station KWHI(AM), 1280 kHz, Brenham, Texas, hereby formally opposes Chameleon Radio Corporation's application to make major changes to radio station KFCC(AM) absent a full evidentiary hearing into Chameleon's basic fitness to be a broadcast licensee. As we will show, Chameleon's recent conduct in relation to KFCC, as well as Chameleon's President's (Don Werlinger's) prior dealings with the FCC and with third parties as regards FCC-licensed stations, give rise to the most serious, substantial, and material questions of fact about Chameleon's fitness to hold a broadcast license, permit, or any other FCC authorization.

I. BACKGROUND

1. Station KFCC (formerly KIOX) is licensed to serve Bay City, Texas, with a transmitter power of 1000 watts (U/DA-N), from a site 5.8 km from the center of Bay City. From the licensed site, KFCC does not provide reception service to Houston, Texas. Late this past April, Chameleon became the licensee of station KFCC. See File No. BAL-950216EA, as amended. Transactional documents had given Chameleon the right:

- either to receive an assignment of the lease for KFCC's licensed transmitter site; or
- to walk away from the station purchase if the landlord would not consent to an assignment of the transmitter site lease.

See Agreement of Purchase and Sale of Assets, §§ 3.3(b), 5.1(c), 7.1(a)(ii); Exhibit 3.3D thereto.

2. A sister company of Chameleon had been brokering air time on a Houston AM station to provide ethnic programming. But around the time Chameleon sought to become the licensee of KFCC, the licensee of that station notified Chameleon's sister company of its intent to terminate the brokering arrangement. Shortly thereafter, on April 21, Chameleon filed a request for STA, claiming an urgent need to move KFCC's transmitter, "[d]ue to the loss of its currently licensed site." KFCC's licensed site is 5.8 km from the center of Bay City, but the STA site Chameleon specified was nearly 80 km away, and nearly 84 km from the center of Bay City. Chameleon's STA request, however, **at the least** implied that the STA site was 0.25 km from the licensed site. Chameleon sought authority to operate nondirectionally with 1000 watts day, 250 watts at night, from a "new" tower at the STA site. The staff advised Chameleon that construction of a new tower would violate the Commission's STA policies. Chameleon thereupon amended its STA request to propose the use of an "existing" tower at the STA site.

3. On May 5, the FCC staff granted Chameleon's amended STA request, but with a nighttime power of 100 watts. A week later, apparently due to concerns about interference to KWHI, the staff modified the May 5 grant. The staff reduced allowable power at the STA site to 300 watts daytime, 50 watts at night. Six days later (on May 18), the staff totally rescinded the STA. "[F]urther study [had] reveal[ed] that KIOX-AM does not cover its city of license, Bay City, Texas, in contravention of Section 74.24(i) of the rules." But the KFCC STA then began to resemble the proverbial cat with nine lives.

4. In a letter subsequently sent to the FCC staff via telecopier, Chameleon claimed that it had become aware of the STA rescission as the result of a facsimile transmission to Chameleon on May 22. What happened next — **in Chameleon's own words** — is truly astounding:

It was only after careful consideration that Mr. Werlinger made the decision to disregard Mr. Vu's [i.e., the FCC staff's] order. The fact of the matter was KFCC continued then as it does now, to be the only outlet in Houston for dozens of international language programmers. At the time of Mr. Vu's order, the Voice of Greece program was promoting the city's largest ever Greek cultural concert, an annual event in other large cities which features bands and performers from Greece on tour in the U.S. It is also an event which,

until this year when radio promotion was possible, had not made a stop in Houston, Texas. Other programmers such as Radio South Asia were planning cultural events. The Voice of Sanatan Hinduism was covering the completion of a new Hindu worship center, and the list went on. In its opinion, Chameleon's responsibilities to its programmers outweighed the potential adverse consequences of not complying with the May 19th [sic] letter rescinding the STA.

By its own admission, Chameleon deliberately disobeyed a valid order of the FCC staff, because keeping KFCC on the air — even though the station was serving Houston, not Bay City — meant more to Chameleon than respecting the Commission's lawful authority....

5. For reasons still unclear, on May 25, the staff stayed the May 18 rescission and thereby revived KFCC's authority to operate at 300 watts day, 50 watts night, from the STA site. (In fact, KFCC apparently never left the air during the entire week KFCC lacked any legal justification to operate from the STA site.) Whitehead subsequently filed a request for immediate cancellation of the STA based on:

- an apparent misrepresentation, or at the least a lack of candor, on Chameleon's part concerning the need for an STA in the first place; and
- new interference to a substantial population within KWHI's licensed service area, despite Chameleon's claims that interference would decrease.

6. By letter of July 25, the FCC staff required Chameleon to respond to questions about the circumstances surrounding its request for and its operation of KFCC under the notorious STA. Among the questions the FCC staff posed:

a. *What were the specific circumstances under which Chameleon "lost" access to KFCC's licensed site, what was the status of KFCC's then-current access to the licensed site, what was the then-present status of KFCC's transmitter plant at the licensed site, and the then-present site of KFCC's studio;*

b. *Were there any sites from which KFCC could maintain coverage as closely as possible to that of the licensed facility, including city-grade service to Bay City;*

c. *Who owned the STA site, what were Chameleon's arrangements with the owner, had Chameleon directly or indirectly ordered construction of the tower at the STA site; and*

d. *When did Chameleon become the licensee of KFCC?*

The staff letter demanded a response by August 4, and extended the STA to that date. The letter

also required Chameleon to serve this firm, as counsel to Whitehead, with a copy of Chameleon's response. On August 4, Chameleon filed the instant application for a major-change construction permit, but had not responded to the July 25 enquiry letter. Also on August 4, KFCC's STA expired. Notwithstanding, it does not appear that KFCC left the air or returned to its licensed site.

7. A week later, the Commission's staff issued another letter canceling the STA, this time due to Chameleon's lack of response to the July 25 enquiry letter. *(Neither had Chameleon served this firm with a copy of any response. In fact, to this day, despite at least two directives from the FCC to do so, Chameleon has never provided this firm with a copy of its response to the July 25 enquiry letter.)* The same day (August 11), apparently once it had learned of the second cancellation of its STA, Chameleon sent by telecopier to the FCC staff a rambling, prolix quasiresponse to the July 25 enquiry letter, dated August 4. (The language quoted in paragraph 3 above comes from that document.) For reasons still unclear, after canceling the STA earlier that same day, later on the Eleventh, the FCC once again revived KFCC's STA.

8. Then, on September 8, the FCC staff issued a letter that analyzed Chameleon's quasiresponse to the July 25 enquiry letter. Specifically, the FCC staff found that the staff had initially granted the STA in the (understandably) mistaken belief that KFCC had lost access to its licensed site, that the STA site was close by, "0.25 km from [the] licensed site," and that STA operations would be from an existing — *not a new* — tower at that site. The staff found that:

- Chameleon's claimed "loss of [the] licensed site" lacked any factual support;
- Chameleon had apparently "...voluntarily abandoned its licensed site, and its licensed Bay City, Texas broadcast service, in order to fulfill identified contractual obligations";
- "The 'need' for an acceptable Houston broadcast signal thus appears to have formed the basis for Chameleon's STA request rather than a "loss" of site that was beyond Chameleon's control [footnote omitted];
- "Chameleon's contractual obligations to programmers seeking a Houston broadcast service do not provide a basis for granting [an] STA that deprives Bay City, Texas, of a licensed service that it has enjoyed for more than forty years.";
- The tower used for STA operations "...was erected for the primary purpose of

providing service under the STA, and with the intention of [that tower] becoming a permanent structure for operations..."; and that

- "...Chameleon's use of STA to Houston, Texas is both a violation of our STA policies and the licensing procedures of the Communications Act of 1934, as amended (the "Act").

Accordingly, the staff's September 8 letter once more — and quite properly — canceled the STA. It is unclear whether KFCC left the air in respect of the Commission's lawful authority. But for reasons still unclear, on October 11, the staff once more stayed the cancellation and revived the STA. It appears that KFCC continues to operate from the STA site and to provide neither transmission nor reception service to Bay City. Chameleon also appears to be violating the main-studio rule, § 73.1125.

9. By means of the instant application, Chameleon seeks permanent authority:
 - to construct and operate a directional array at the STA site with a transmitter power level of 2500 watts daytime, 850 watts night;
 - to abandon Bay City;
 - and to relicense KFCC to the Houston suburb of Missouri City, Texas.

The staff accepted the application for filing in September, and the application remains pending.

II. ARGUMENT: A SUBSTANTIAL AND MATERIAL QUESTION OF FACT EXISTS CONCERNING CHAMELEON'S FITNESS TO HOLD ANY FCC AUTHORIZATION

10. The Communications Act requires that:

If . . . a substantial and material question of fact is presented [by an application for an FCC license or for permission to control an FCC license holder]..., [the Commission] shall formally designate the application for hearing on the ground or reasons then obtaining.... Any hearing subsequently held upon such an application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate.

47 U.S.C. § 309(e) (1988). For the FCC to "hold a hearing, the dispute must be clearly and adequately alleged, it must be factual, and it must rise to the level of a substantial and material issue." David Ortiz Radio Corp. v. FCC, 941 F.2d 1253 (D.C. Cir. 1991). This pleading will clearly and adequately show that, on multiple factual grounds, a substantial and material issue

exists as to whether Chameleon possesses the basic fitness to hold any public trust, including any authorization issued by this Commission.¹

11. It is abundantly clear that Chameleon's claim to have "lost" access to KFCC's licensed transmitter site was a deliberate lie, and the "loss" a deliberate artifice to create the *appearance* of extraordinary circumstances and to thereby prompt the FCC staff to issue an STA when, in fact, not a shred of exigency existed. Random House Webster's Electronic Dictionary and College Thesaurus Version 1.0 (1993 Ed.) provides 27 meanings for the transitive verb "lose, lost, losing." The primary definitions are:

1. *to come to be without, as through accident: They lost all their belongings in the storm.*
2. *to fail inadvertently to retain, usu. temporarily: I just lost a dime under this sofa.*
3. *to suffer the deprivation of: to lose one's job.*
4. *to be bereaved of by death: to lose a sister.*
5. *to fail to preserve or maintain: to lose one's balance.*
6. *(of a timepiece) to run slower by: The watch loses three minutes a day.*

Within the scope of these definitions, Chameleon clearly did not "lose" access to KFCC's licensed site. The only listed senses of the word that could even remotely support Chameleon's usage are:

7. *to forfeit the possession of: to lose a fortune by gambling.*
8. *to get rid of: to lose weight.*
17. *to cause the loss of: The delay lost the battle for them.*

However, those subordinate meanings are clearly inapposite here. The essential nature of an STA, which flows from the statutory requirement of "extraordinary circumstances" (see § 309(f) of the Act), is that of a safety valve. The legitimate purpose of an STA is to accommodate licensees who

¹Whitehead, which respects the FCC's lawful authority, would not even dream of engaging in the types of outrageous behavior that Chameleon has evinced in this sorry episode. Indeed, it is fair to say that *most* broadcasters would *never* engage in such chicanery before the Agency, for fear of both losing their station licenses and ending up on a rock pile at Leavenworth.

require immediate administrative relief if they are to preserve at least a portion of their authorized service in the face of Acts of God or other instances of *force majeure*. Clearly, under the statutory framework, manufactured “exigencies” are improper — to say the least — as are instances of blatant chicanery that trick the staff into thinking exigencies exist.

12. The case law surrounding site-availability questions makes it clear that Chameleon did not “lose” access to its licensed site. Rather, in light of that precedent and facts incapable of dispute, Chameleon deliberately abandoned that site.² The minimal requirement to establish reasonable assurance of site availability is a meeting of the minds resulting in a firm understanding between a site owner and applicant. Webster-Fuller Communications Associates, 65 Rad.Reg. (P & F) 2d 1068 (Rev. Bd. 1988). A binding contract is not necessary, but a contractual right to use the site will moot any question about site availability. It is well established that specification of a transmitter site entails an implied representation that such site is available, and the failure to secure

²Random House Websters provides the following definitions, all of which are applicable to Chameleon’s actions with regard to KFCC’s licensed site:

a•ban•don [1] (é ban'dén) v.t. -doned, -don•ing

1. to leave completely and finally; forsake utterly; desert: to abandon a child; to abandon a sinking ship.
2. to give up; discontinue; withdraw from: to abandon a project; to abandon hope.
3. to give up the control of: to abandon a city to an enemy army.
4. to yield (oneself) without restraint or moderation, as to emotions or natural impulses: to abandon oneself to grief.
5. to relinquish (insured property) in case of partial loss, so that the insured can claim a total loss.
6. Obs. to banish.

[1325-75; ME abando (u) nen < MF abandoner for OF (mettre) a bandon (put) under (someone's) jurisdiction = a at, to (< L ad; see AD -) + bandon < Gmc * band; see BOND 1]

Derived words

- a•ban'don•a•ble, adj.
- a•ban'don•er, n.
- a•ban'don•ment, n.

a•ban•don [2] (é ban'dén) n.

1. a complete surrender to natural impulses without restraint or moderation; freedom from constraint: to dance with reckless abandon.

[1815-25; < F, n. der. of abandonner to ABANDON 1]

such assurance before specifying that site constitutes misrepresentation. William F. Wallace, 49 F.C.C. 2d 1424, 1427 (Rev. Bd. 1974). Conversely, if a party has a contractual right to use a site but claims it has lost access to that site, such claim also constitutes misrepresentation.

13. Here, Chameleon had a contractual right to receive an assignment of the site lease or to walk away from the KIOX/KFCC transaction. At the closing, Chameleon received an assignment of the rights of its seller, Landrum Enterprises, Inc., to use that site. Also at the closing, Chameleon voluntarily leased back to its seller the right to use the licensed site for the seller's FM station. Chameleon's claim to have "lost" KFCC's licensed site flies in the face of those facts, which are established by Chameleon's April 20 Lease Agreement with Landrum Enterprises, Inc. Chameleon itself has provided to the Commission that Lease Agreement, signed by Chameleon's President —the same person who signed the STA request claiming the loss of KFCC's licensed site. This inevitably leads one to conclude that Chameleon and its President deliberately misrepresented — or at the least lacked candor concerning — Chameleon's allegedly lost all right of access to KFCC's licensed transmitter site.

14. "Misrepresentation, both legally and conventionally, connotes a false statement of an objective fact intentionally made to deceive." Fox River Broadcasting, Inc., 50 Rad. Reg. (P & F) 2d 1321, 1324 (Rev. Bd. 1982). Misrepresentation comprises five elements: (1) a statement; (2) falsity; (3) materiality; (4) intent; and (5) agency jurisdiction. U.S. v. Lange, 528 F.2d 1280 (5th Cir. 1976). Under the Lange standard, Chameleon's claim to have "lost" its licensed transmitter site plainly rises to the level of misrepresentation.

- Chameleon's claim is a statement concerning an objective fact.
- That statement is demonstrably false.
- The false statement is a material one, in light of the exigency the Commission requires before it will grant an STA.
- The material, false statement was clearly intentional, because: Chameleon knew the true state of affairs to be otherwise; and Chameleon had a motive (its desire for an STA) to misrepresent the true state of affairs.

- The Commission clearly has jurisdiction over Chameleon's making of a false statement to it. See 47 C.F.R. §§ 1.17, 73.1015.

In addition to evidence of a misrepresented or concealed fact, proper proof of "deceit" (i.e., misrepresentation or lack of candor) consists of "evidence of a logical reason, desire, intention or motive to deceive, mislead, conceal, or misrepresent." Garrett, Andrews & Letizia, 86 F.C.C.2d 1172, 1176-77 (Rev. Bd. 1981). The record of Chameleon's recent dealings with the FCC is rife with evidence of a logical reason and motive to deceive, mislead, conceal, or misrepresent. If Chameleon had been truly forthcoming about its goals in seeking an STA and the actual state of affairs concerning KFCC's licensed site, the staff would have never granted the STA that has proven to be so durable.

15. If for some inexplicable reason, the FCC cannot find that there is substantial evidence of misrepresentation by Chameleon about the status of KFCC's licensed site, it must conclude that Chameleon has engaged in a serious lack of candor. "The core of lack of candor, then is omission, viz., failure to be completely forthcoming in the provision of information which could illuminate a decisional matter." Fox River Broadcasting, Inc., 50 Rad. Reg. (P&F) 2d 1321, 1325 (Rev. Bd. 1982). If not guilty of outright lies, Chameleon was *at the least* not completely forthcoming about its right of access to the KFCC licensed transmitter site. If the staff had known that Chameleon had received a contractual right to use the site at the closing table and then, at the same closing table, purported to assign that right back to its seller, the staff would never have granted Chameleon its ardently desired STA. The status of the licensed site is thus clearly a matter of decisional significance. The great weight that the Commission attaches to instances of lack of candor arises out of the "special status of licensees as trustees of a scarce public resource." Leflore Broadcasting Co., Inc. v. FCC, 636 F.2d 454, 461 (D.C. Cir. 1980). Indeed, lack of candor is sufficient to disqualify a licensee even if there is insufficient evidence to show an intent to mislead. RKO General, Inc. v. FCC, 670 F.2d 215 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 (1982).

16. It is beyond dispute that, to perform its duties effectively, "the Commission must, of necessity, rely upon the statements and submissions of its licensees.... The fundamental importance of truthfulness and complete candor on the part of applicants, as well as licensees, in their dealings with the Commission is well established." Lebanon Valley Radio, Inc., 35 F.C.C.2d 243, 258 (Rev. Bd. 1972), review denied, 39 F.C.C.2d 1099 (1973), rev'd on other grounds sub nom., Lebanon Valley Radio, Inc. v. FCC, 503 F.2d 196 (D.C. Cir. 1974). See also, FCC v. WOKO, Inc., 329 U.S. 223, 227 (1946). Since the Agency must oversee thousands of broadcast stations and has limited staff resources, it must rely substantially on the completeness and accuracy of licensees' and applicants' submissions made to it. WHW Enterprises, Inc. v. FCC, 753 F.2d 1132, 1139 (D.C. Cir. 1985); RKO General, 670 F.2d at 232.

17. "[T]he FCC would be derelict if it did not hold broadcasters to 'high standards of punctilio'." Leflore, supra, quoting Lorain Journal Co. v. FCC, 351 F.2d 824, 830 (D.C. Cir. 1965). Here, Chameleon has failed its basic duty of honesty in its dealings with the Commission. Chameleon therefore lacks the basic character attributes necessary to be a Commission licensee. The Commission would be derelict if it let Chameleon emerge unscathed — even enriched — from its outrageous conduct in this matter.

18. There have been several other instances of overt misrepresentation or lack of candor on the part of Chameleon in this sorry episode. For example, Chameleon originally and accurately described its proposed STA radiator as a "new" structure. But then, when the FCC staff voiced a disinclination to grant an STA for new tower construction, Chameleon "amended" its STA request to specify an "existing" tower. The staff then granted the STA. But the tower had apparently come into existence through Chameleon's own efforts during the period between the filing of the original STA request and the filing of the "amendment" thereto. The amendment's reference to an "existing" tower was unmitigated chicanery.

19. Another example of Chameleon's sleight-of hand is its characterization of the STA site as 250 meters (273 yards) from the "existing" site. The clear implication was that the STA site

was immediately adjacent to KFCC's licensed site, *when in fact the two sites were nearly 81 kilometers (50 miles) apart*. Chameleon has also falsely told the Commission that Whitehead had given Chameleon verbal assurances that it would not oppose KFCC's application. But in fact, Chameleon offered Whitehead money to withdraw Whitehead's objection to the KFCC STA, an offer Whitehead rejected out of hand. The statement of Whitehead's consulting engineer, Mr. John Furr, that accompanied Whitehead's Petition for Immediate Cancellation of STA, which we incorporate herein by this express reference, recites a further litany of instances where Chameleon's President has lied concerning FCC matters and has proffered bogus signal measurements to the Commission. Each of these aspects of Chameleon's and Chameleon's President's natures as dissemblers raises the most substantial and material question of fact concerning Chameleon's basic character qualifications to be a Commission licensee. Serious questions also exist about Chameleon's President's basic qualifications to exercise control over a Commission licensee or to even have an attributable or nonattributable interest in an entity holding a Commission authorization.

20. Not only has Chameleon violated the Commission's Rules, it has also engaged in criminal conduct. Under § 501 of the Act, any person who willfully and knowingly violates the Act through act or omission may be fined up to \$10,000 or imprisoned for up to one year, or both. Subsequent violations may result in fines of up to \$10,000 or imprisonment for up to two years, or both. Under § 502 of the Act, those who willfully and knowingly violate the Commission's Rules may be fined up to \$500 for each day during which the offense occurs. This sanction may apply in addition to forfeitures levied by the Commission under § 503 of the Act (which can total \$250,000 for an ongoing offense).

21. Moreover, 18 U.S.C. § 1001 makes criminal, inter alia, the making of any "false, fictitious or fraudulent... representations [in] any matter within the jurisdiction of any department or agency of the United States." To sustain a § 1001 charge, it must be shown that the statement was not a "... careless act..." but rather one made in "... a conscious effort to avoid learning the

truth." Even a statement made in "... reckless disregard..." of the truth is culpable conduct under that statute. U.S. v. Sarantos, 455 F. 2d 877, 880-881 (2nd Cir. 1972). Chameleon's conduct clearly falls to that level. After designating the instant application for hearing and adducing further evidence on specified misrepresentation, lack-of-candor, and basic-qualifications issues, in light of Chameleon's transparent contempt for this Commission's lawful authority and for Chameleon's own duties of veracity and candor to this Agency, this Commission will be fully warranted to refer this matter to the Justice Department for criminal prosecution.

III. CONCLUSION

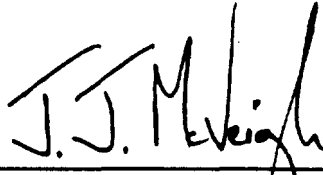
The inescapable conclusion is that the aptly named Chameleon, for its own pecuniary benefit, has hoodwinked the FCC into allowing a wholesale removal of transmission and reception service from Bay City, Texas. No licensee should be able, with impunity, to manufacture exigencies to trick this Commission into authorizing an illegitimate operation — especially one that injures both that station's community of license and an innocent adjacent-channel station. The staff must, on delegated authority, promptly designate the instant application for a full evidentiary hearing, with basic qualifying issues specified. The FCC must also take immediate corrective action with regard to the spurious STA. The Commission must revoke

that "interim" authorization and must order KFCC forthwith either to return to its licensed site or to cease operation. Otherwise, this Commission shall have become a laughingstock among licensees.

Respectfully submitted,

TOM S. WHITEHEAD, INC.

By

A handwritten signature in black ink, appearing to read "J.J. McVeigh", written over a horizontal line.

John Joseph McVeigh
Its Counsel

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(202) 797-7124

Date: November 28, 1995

CERTIFICATE OF SERVICE

I, John Joseph McVeigh, hereby certify that I have this Twenty-eighth day of November, 1995,
sent copies of the foregoing "**FORMAL OPPOSITION TO APPLICATION**" by hand delivery to:

The Honorable Reed Hundt, Esq.
Chairman
Federal Communications Commission
1919 M Street Northwest, Room 814
Washington, D.C. 20554

Roy J. Stewart, Esq.
Chief, Mass Media Bureau
Federal Communications Commission
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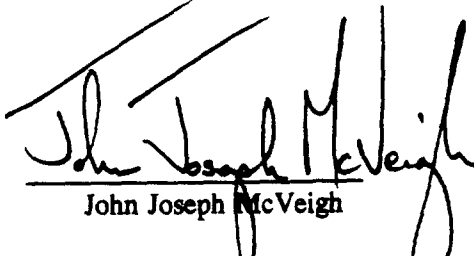
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Counsel to Chameleon Radio Corporation


John Joseph McVeigh

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BEFORE THE
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WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Application of)

CHAMELEON RADIO CORPORATION)

File No. BP-950804AC

For Authority to Make Major Changes to the)
Licensed Facilities of Radio Station KFCC,)
1270 kHz, Bay City, Texas)

To: The Acting Chief, Audio Services Division, Mass Media Bureau

SUPPLEMENT TO FORMAL OPPOSITION TO APPLICATION

Tom S. Whitehead, Inc., the licensee of station KWHI(AM), 1280 kHz, Brenham, Texas, hereby supplements its November 28 Formal Opposition to Chameleon Radio Corporation's application to make major changes to radio station KFCC(AM). This Supplement addresses procedural matters and supplies newly obtained evidence that is relevant and material to the prime issue which our Formal Opposition raised.

I. Service on Chameleon

We served a copy of our Formal Opposition on Charles Cervantes, Esq. at the law firm of Maloney & Burch. We did not serve Chameleon directly. Mr. Cervantes and that law firm have appeared on Chameleon's behalf in connection with the illicitly obtained Special Temporary Authority *under which KFCC has been operating for the past eight months*. The circumstances surrounding Chameleon's grant of STA, the details of Chameleon's illicit operation of KFCC under that STA, and the misleading statements Chameleon has made to the Commission both before and after the grant of the STA form the gravamen of Whitehead's Formal Opposition.

Several days ago, Adrian Cronauer, Esq. of the law firm of Maloney & Burch informed us that Maloney & Burch is not serving as communications counsel in the matter of Chameleon's major-change application. An intervening foreign trip to serve as an expert witness in legal

proceedings involving FCC regulatory issues prevented us from addressing the issue of service sooner. To ensure adequate service on Chameleon itself, we are today sending by first-class mail directly to Chameleon a copy of our Formal Opposition. For the purposes of §§ 1.4 and 1.45 of the Rules, we have no objection to treating the Formal Objection as filed and served upon Chameleon today.

II. New Evidence

Yesterday, we received a telecopy of the Declaration Under Penalty of Perjury of Jake Landrum, President of Landrum Enterprises, Inc. ("LEI"). LEI is the former licensee of station KFCC and the entity that assigned that station to Chameleon. Mr. Landrum's Declaration, Exhibit A hereto, places beyond dispute the stark fact that, from the date of closing through the present, Chameleon has always had the right to use KFCC's licensed site. Moreover, as the Commission well knows from its out license records, AM transmitters and STL equipment or main FM antennas (or both) frequently share the same tower. In sum, there is no technical or legal reason why Chameleon cannot and ever could not use the licensed site. Chameleon's statements to the contrary are blatantly false; Maloney & Burch's arguments to the contrary simply do not hold water.

III. Ex Parte Rules

Whitehead has formally opposed both Chameleon's major change application and the STA. Any further correspondence or conversations related to the merits between Chameleon and the FCC should be served on the undersigned as communications counsel to Tom S. Whitehead, Inc.

IV. Conclusion

As our Formal Opposition and this Supplement show, Chameleon, for its own pecuniary benefit, hoodwinked the FCC into allowing a wholesale removal of transmission and reception service from Bay City, Texas. The staff must, on delegated authority, promptly designate the

instant application for a full evidentiary hearing, with basic qualifying issues specified. The FCC must also take immediate corrective action with regard to the spurious STA. The Commission must revoke that "interim" authorization and order KFCC forthwith to return to its licensed site or to cease operation.

Respectfully submitted,

TOM S. WHITEHEAD, INC.

By _____
John Joseph McVeigh
Its Counsel

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Date: December 6, 1995

EXHIBIT A

12/05/95 12:25

Z 4995439581

MID-COAST CABLE

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DECLARATION UNDER PENALTY OF PERJURY

I, Jake Landrum, depose and state as follows:

1. I am president of Landrum Enterprises, Inc. ("Landrum Enterprises"), licensee of FM broadcast station KIOX-FM (96.9 MHz), El Campo, Texas. Landrum Enterprises is the former licensee of AM broadcast station KIOX (now KFCC) (1270 KHz), which it operated at a site located near State Highway 35, approximately two miles east of Bay City, Texas (the "Bay City Site").

2. On March 10, 1995, Landrum Enterprises entered into an Agreement of Purchase and Sale of Assets ("Asset Purchase Agreement") with Chameleon Radio Corporation ("Chameleon"), providing for the sale to Chameleon, subject to the terms and conditions set forth in the Asset Purchase Agreement, of all the real property, personal property, tangible and intangible assets of Landrum Enterprises used in the operation of KIOX, including but not limited to the three AM towers, the studio building and all the radio equipment necessary to operate the station at the Bay City Site. The Asset Purchase Agreement also provided for Chameleon to take assignment of a ground lease (described more fully below, and to enter into a lease agreement with Landrum Enterprises. I signed the Asset Purchase Agreement on behalf of Landrum Enterprises; Don Werlinger, Chameleon's president, signed on its behalf.

3. On April 20, 1995, pursuant to Commission consent, Landrum Enterprises assigned the KIOX license to Chameleon and sold the station's assets to Chameleon. As a part of that transaction, on that date Landrum Enterprises and Chameleon entered into an Assignment of Lease whereby Landrum Enterprises assigned to Chameleon, Landrum Enterprises' right title and interest in that certain Lease Agreement for the lease of the property located at the Bay City Site ("Ground Lease") by and between Cathryn Long Clark, Independent Executrix of the Estate of John G. Long, deceased, and James M. Allen, Independent Administrator of the Estate of Mary Adams Long, deceased, as lessor and North Star Communications, Inc. as lessee, North Star's interest thereunder having been assigned to Landrum Enterprises by an assignment dated December 22, 1994, the estate's interest being subsequently assigned to J.F. Long and Cathryn L. Clark, a Texas Partnership. Pursuant to the Assignment of Lease, Chameleon assumed all of Landrum Enterprises' right, title and interest in and to and all obligations under the lease. At the time of the execution of the Assignment of Lease, the Lease Agreement required monthly payments in the amount of \$625.00. I signed this Assignment of Lease on behalf of Landrum Enterprises; Don Werlinger, Chameleon's president, signed on its behalf.

4. Also on April 20, 1995, Landrum Enterprises and Chameleon entered into a Lease Agreement ("Sub-lease") allowing Landrum Enterprises to use the Bay City Site for KIOX-FM's main studio operations.

5. The Sub-lease, the Assignment of Lease and the Asset Purchase Agreement have never prevented Chameleon from operating AM station KIOX (now KFCC) at the Bay City Site subsequent to Chameleon's acquisition of the station.

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6. There is currently no lease agreement or other written or oral agreement between Landrum Enterprises and Chameleon that would prevent Chameleon from gaining access to the Bay City Site in order to operate AM station KIOX (now KFCC) from that site.

I declare under penalty of perjury that the foregoing is true and correct.


Jake H. Landrum

Dated this 5th day of December, 1995.

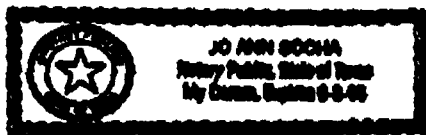


EXHIBIT B

DECLARATION OF MARK S. WHITEHEAD

I, Mark Whitehead, Vice-President of Tom S. Whitehead, Inc., declare, under penalty of perjury, that the contents of Exhibit A to this Supplement to Formal Opposition to Application are a true and correct copy of the Declaration Under Penalty of Perjury of Jake Landrum, as received by telecopier directly from Mr. Landrum himself. I further state that it is the wish of Tom S. Whitehead, Inc. that any communications concerning either the KFCC STA or the KFCC major-change application be directed to Mr. McVeigh, our communications counsel.

Date: December 6, 1995


Mark Whitehead

CERTIFICATE OF SERVICE

I, Kelley Marie Curtis, a secretary to the firm of Multinational Legal Services, hereby
certify that I have this Sixth day of December, 1995, sent copies of the foregoing
"SUPPLEMENT TO FORMAL OPPOSITION TO APPLICATION" by hand delivery
to:

The Honorable Reed Hundt, Esq.
Chairman
Federal Communications Commission
1919 M Street Northwest, Room 814
Washington, D.C. 20554

Roy J. Stewart, Esq.
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street Northwest, Room 302
Washington, D.C. 20554

Linda Blair, Esq.
Chief, Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street Northwest, Room 302
Washington, D.C. 20554

Mr. James Burtle
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street Northwest, Room 342
Washington, D.C. 20554

Kelley D. Yaksich, Esq.
Audio Services Division
Mass Media Bureau
Federal Communications Commission
1919 M Street Northwest, Room 332
Washington, D.C. 20554

and by first-class United States mail, postage prepaid, to:

Adrian Cronauer, Esq.
Maloney & Burch
1100 Connecticut Avenue Northwest,
Suite 1200
Washington, D.C. 20036-4101

Mr. Don Werlinger, President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099.

I have also this day sent to Mr. Werlinger, along with his copy of the Supplement, a copy of the November 28, 1995 Formal Opposition to Application.


Kelley Marie Curtis

Chameleon Radio Corporation
 Licensee, Radio Station KIOX
 Bay City, Texas
 1270 kHz, 1 kw, U, DA-N
 Exhibit: 4, Page: 18

36	30	10	5	96	25	20	kttx	Distances in Kilometers.			
.0	4	15.0E	44.5	4.0E	160.9	15.0E	211.2	30.0E	300.0		
10.0	4	15.0E	36.4	4.0E	204.3	8.0E	257.3	30.0E	300.0		
20.0	3	15.0E	31.9	4.0E	206.7	8.0E	300.0				
30.0	3	15.0E	29.1	4.0E	218.1	8.0E	300.0				
40.0	3	15.0E	27.6	4.0E	241.4	8.0E	300.0				
50.0	5	15.0E	27.0	4.0E	168.5	8.0E	209.2	4.0E	267.9		
		8.0E	300.0								
60.0	3	15.0E	27.2	4.0E	147.8	8.0E	300.0				
70.0	3	15.0E	28.4	4.0E	137.7	8.0E	300.0				
80.0	3	15.0E	31.1	4.0E	132.6	8.0E	300.0				
90.0	7	15.0E	35.6	4.0E	52.6	15.0E	79.8	4.0E	131.8		
		8.0E	133.4	30.0E	158.2	8.0E	305.9				
100.0	3	15.0E	134.1	30.0E	262.2	5000.0E	300.0				
110.0	11	15.0E	118.2	30.0E	138.4	5000.0E	144.8	30.0E	148.9		
		5000.0E	150.8	30.0E	159.8	5000.0E	175.9	30.0E	194.3		
		5000.0E	199.7	30.0E	203.9	5000.0E	300.0				
120.0	3	15.0E	108.9	30.0E	171.3	5000.0E	300.0				
130.0	3	15.0E	122.2	30.0E	170.7	5000.0E	300.0				
140.0	3	15.0E	162.3	30.0E	175.8	5000.0E	300.0				
150.0	3	15.0E	164.6	30.0E	175.2	5000.0E	300.0				
160.0	3	15.0E	110.6	30.0E	171.1	5000.0E	300.0				
170.0	3	15.0E	82.8	30.0E	175.7	5000.0E	300.0				
180.0	5	15.0E	69.0	30.0E	174.7	5000.0E	189.8	30.0E	193.2		
		5000.0E	300.0								
190.0	5	15.0E	57.0	30.0E	198.1	5000.0E	210.6	30.0E	222.3		
		5000.0E	300.0								
200.0	4	15.0E	83.8	30.0E	270.6	5000.0E	279.3	30.0E	300.0		
210.0	2	15.0E	173.5	30.0E	300.0						
220.0	1	15.0E	300.0								
230.0	1	15.0E	300.0								